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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

IN RE:)	Case No: 13-21046-C-13C
)	DCN: DPC-1
)	
JOHN HOWARD HELLIWELL)		TRUSTEE'S MOTION TO DISMISS
TAMMY MARIE HELLIWELL)		CASE
)	
)	DATE: SEPTEMBER 10, 2014
)	TIME: 10:00 A.M.
)	JUDGE: KLEIN
<u>Debtor(s)</u>)	COURTROOM: 33

DAVID P. CUSICK, STANDING CHAPTER 13 TRUSTEE, hereby moves the Court for an order dismissing this case pursuant to 11 U.S.C. §1307(c) as:

1. The debtors are in material default. **The debtors failed to provide for the Priority Portion of the Franchise Tax Board claim (Court claim #7) in the amount of \$1,376.76 of which \$1,194.12 was claimed as priority.** § 2.13 of the Plan makes this failure a breach of the plan. The Debtor was provided a Notice of Filed Claims on August 26, 2013, Docket Number

1 74, which listed this claim on Page 5 as priority and not provided for in the plan and indicated
2 that a motion to modify was required, Page 2, Item (f).

3 2. It appears the Debtors cannot make the payments required under 11 U.S.C.
4 § 1325(a)(6). **The debtors are delinquent \$3,173.87 under the terms of the plan confirmed**
5 **7-24-13.** The debtors have paid a total of \$53,958.13 to the Trustee with the last payment posted
6 6-24-14. Another payment of \$3,174.00 will become due 8-25-14.

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10 The debtor must be current under all payments called for by any pending Plan, Amended
11 Plan or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

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13 WHEREFORE, the Trustee asks that the Court grant an order dismissing this proceeding.

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16 Dated: August 13, 2014

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Neil Enmark, Attorney for Trustee